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No. 88-66

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

JAMES B. COPELAND,

Petitioner,

v.

PHILADELPHIA POLICE DEPARTMENT
and
KEVIN TUCKER, In His Official Capacity
As Philadelphia Police Commissioner
and
WILLIAM F. REED, In His Official Capacity
As Staff Inspector For The
Philadelphia Police Department,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The City Solicitor, on behalf of the Philadelphia Police Department, Kevin Tucker and William F. Reed, hereby opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

STATEMENT OF THE CASE

Respondents, Philadelphia Police Department, et al.

(City) incorporate by reference the statement of facts set forth in the decision of the United States Court of Appeals for the Third Circuit (App. A-11—A-14).

ARGUMENT

I. This Case Presents No Question Of Federal Law Which Has Not Already Been Decided By This Court.

In its decision below, the Court of Appeals for the Third Circuit was asked to determine whether the district court had erred in finding that the City had not violated the Petitioner, James B. Copeland's, Fourth and Fourteenth Amendment rights to be free from unreasonable search and seizure when it ordered him to submit to a urinalysis test. It found that the proper standard in these circumstances was whether the Police Department had a reasonable suspicion that Copeland was a user of illegal drugs. (App. A-15—A-16). The Petitioner agreed that reasonable suspicion was the proper standard before the court of appeals.

Even now in his Petition for a Writ of Certiorari Copeland does not dispute that the reasonable suspicion standard, requiring an individualized suspicion somewhat less than probable cause, has uniformly been adopted by the lower federal courts in the drug testing context. *See, Penny v. Kennedy,* 846 F.2d 1563 (6th Cir. 1988); *Railway Executives' Association v. Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. granted*, 56 USLW 3831 (June 6, 1988); *McDonell v. Hunter,* 809 F.2d 1302 (8th Cir. 1987); *National Treasury Employees Union v. von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 56 USLW 3590 (February 29, 1988). Petitioner further acknowledges that when this Court has addressed the issue of public employee rights in a similar context it held that

> . . . public employer intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be

> judged by the standard of reasonableness under all the circumstances . . .

O'Connor v. Ortega, 480 U.S. ____, 94 L.Ed.2d. 714, 728 (1987).

Petitioner's only dispute is with how the reasonable suspicion standard was applied to the particular facts in this case.[1] Such an issue does not merit review by this Court.

II. The Facts Of This Matter Are Far Too Narrow To Warrant Interpretation By This Court.

This Court has cautioned that it should avoid deciding federal questions which arise merely in an "episodic" context. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1954). The facts of this matter clearly are so singular as to have little or no potential impact on other Circuits should this Court render a full opinion.

As fully set forth in both the Petitioner's and the City's Statements of the Case, this matter involves the unusual situation where a sworn police officer accuses another police officer, who was her boyfriend, of using illegal drugs in her presence and then retracts that allegation. It further includes the fact that the accused police officer had recently been suspended as a result of the investigation of a fellow officer who was dismissed for the use of illegal drugs. This factual scenario is not only unusual, but surely unique and not likely to be repeated.

An additional decision by this Court, addressing solely the unique facts of this case would merely duplicate this Court's efforts in articulating the rights of public employees when requested to submit to urinalysis examinations for illegal drugs. This Court should avoid employing its judicial

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1. This Court has already granted certiorari in two drug testing cases, *von Raab, supra* and *Burnley, supra*. To the extent that any issue raised by this Petition is included in those proceedings, it is further reason to deny review in this case.

resources in reviewing a matter of such narrow scope and significance.

III. The Undisputed Facts In This Case Constitute Reasonable Suspicion For Requiring Urinalysis Testing.

The undisputed facts in this case clearly demonstrate reasonable suspicion of illegal drug usage. A reasonable suspicion in this context requires some individualized suspicion that the test will turn up evidence that the police officer is using illegal drugs. *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985). The appeals court was correct in determining that as a matter of law, the City had reasonable suspicion for requesting that Copeland submit to the urinalysis.

The allegation by the Petitioner's girlfriend, Marion Brickhouse, alone was sufficient to warrant the test. While she may have denied the drug use later, there is no dispute that Brickhouse, a sworn Police Officer, told Copeland's commanding officer that she had seen Copeland use illegal drugs. Such an allegation from an identified individual with reliable first hand knowledge might well even meet a probable cause standard. *Illinois v. Gates*, 462 U.S. 213 (1983).

Copeland's commanding officer was obligated to, and did, report this allegation to the Police Department's Internal Affairs Division. At the time of the allegation, Copeland was in the process of serving a 15 day suspension for being off his beat in the company of a fellow officer, who was alleged to be selling drugs and who was dismissed for the use of illegal drugs. These facts themselves constituted reasonable suspicion that Petitioner may have been using illegal drugs and justified the urinalysis. Petitioner has presented no reason why the court of appeals' decision to that effect should be reviewed.

CONCLUSION

For all of the foregoing reasons, the Writ of Certiorari should be denied.

Respectfully submitted,

SEYMOUR KURLAND
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Counsel for Respondents